

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF HAWAII
3
4 KENNETH LAKE, CRYSTAL LAKE,)
5 HAROLD BEAN, MELINDA BEAN,)
6 KYLE PAHONA, ESTEL PAHONA,)
7 TIMOTHY MOSELEY, ASHLEY)
8 MOSELEY, RYAN WILSON, AND)
9 HEATHER WILSON,)
10 Plaintiffs,)
11 vs.)
12 OHANA MILITARY COMMUNITIES,)
13 LLC, FOREST CITY RESIDENTIAL)
14 MANAGEMENT, INC., AND DOE)
15 DEFENDANTS 1-10,)
16 Defendants.)
17
18
19 DEPOSITION OF
20 TIMOTHY MOSELEY
21
22
23
24
25 Taken on behalf of the Defendants, Ohana Military
Communities, LLC and Forest City Residential Management,
Inc., at 800 Bethel Street, Suite 600, Honolulu, Hawaii,
Commencing at 8:00 a.m., on April 16, 2019, pursuant to
notice.

BEFORE: SHEILA MOORE, RPR, RMR, CMRS, CRR, CSR No. 501

RALPH ROSENBERG COURT REPORTERS, INC.
(808) 524-2090

EXHIBIT 3

1 leases that were being issued at this time all should
2 have included a construction relocation addendum. Does
3 this refresh whether or not you received a construction
4 addendum as part of your lease?

5 MR. SMITH: Just object to the extent you're
6 representing facts that are not in evidence, but if
7 you remember signing it, then that's what he's
8 asking, or if you remember receiving it.

9 THE WITNESS: I don't remember.

10 BY MR. WHATTOFF:

11 Q. Before moving into the Lawrence Road home, did
12 you look into any off-base housing options?

13 A. Yes.

14 Q. What did you look at?

15 A. We looked at quite a few, because there were no
16 houses available, and we lived at The Lodge for a while
17 while we were looking for a place to live, and we
18 couldn't afford really anything, and eventually Forest
19 City came up with that house for us to get into.

20 Q. I think we have a record of it, but do you recall
21 what your BAH was at that time?

22 A. I do not.

23 Q. Where were you looking at potential rentals?

24 A. Anywhere in the Kaneohe area, Kailua. Somewhere
25 close to base.

1 Q. And can you recall any of the specific homes that
2 you looked at or specific apartments that you looked at?

3 A. No.

4 Q. Do you recall what the rent was for a similar
5 home to what you were renting in Kaneohe or Kailua?

6 A. I don't remember exactly. I know everything is
7 really expensive there.

8 Q. Did you look at any neighborhoods other than
9 Kailua or Kaneohe?

10 A. No, I was trying to be as close to base as
11 possible.

12 Q. Other than a general statement that the homes in
13 -- you looked at in Kaneohe and Kailua were more
14 expensive, can you give me anymore specific detail about
15 what a similar-priced home would rent for in those
16 neighborhoods at that time?

17 A. The price?

18 Q. Generally speaking. Let's say your BAH was
19 around \$2,000 a month. Is your recollection that the
20 homes that you were looking at were \$3,000 a month or --
21 or do you have any -- maybe you don't have any
22 recollection.

23 A. I don't remember exactly. I know it would have
24 been pretty close to what my BAH was, possibly more.

25 Q. Okay. Well, if it's close to your BAH, then you

1 could have lived off base, correct?

2 A. If it was suitable.

3 Q. Were the homes not suitable?

4 A. None of them were ones that were going to be open
5 anyways were anything we'd like to live in.

6 Q. What was the problem with the homes you looked
7 at?

8 A. Honestly, it just -- it felt safer on base.

9 Q. Is there anything you can specifically identify
10 that was unsuitable at those off-base homes?

11 A. Lack of air conditioning. Some that were open
12 were too far away. Just the community in general,
13 they're not usually accepting of people outside of
14 Hawaii.

15 Q. Was that the biggest issue for you?

16 A. Yeah, well, it's just not the price of
17 everything, it just didn't seem like it was worth it.

18 Q. You thought that the homes at Marine Corps Base
19 Hawaii were a better value than what you would be able
20 to rent off base?

21 A. Yeah, well, I thought it would be safer, it would
22 be surrounded by more people like myself with families,
23 and I was hoping to get one of the newer homes because
24 they looked nice.

25 Q. Mr. Moseley, you've given some general

1 behind our house was our yard, and I remember all the
2 grass was, like, dead or there was dirt everywhere, and
3 then there was another house as well.

4 Q. Mr. Moseley, do you recall the meeting where you
5 signed the lease for the Lawrence Road home?

6 A. I don't remember all that much.

7 Q. Did you have an opportunity to review the lease
8 before you signed it?

9 A. They just went through where to sign, and also
10 the lead disclosure.

11 Q. The lead disclosure was specifically pointed out
12 to you?

13 A. Yes.

14 Q. Do you recall any other portions being
15 specifically pointed out to you?

16 A. No, just -- just that, and we asked -- we were
17 concerned about it, and they just said there's nothing
18 to worry about. If any paint starts peeling, you know,
19 clean it up immediately, stuff like that.

20 Q. Did you read the lease before you signed it?

21 A. I went through it with the agent or whatever.

22 Q. Did you ask for more time to review the lease?

23 A. No.

24 Q. Was there any portion of the lease that you
25 objected to?

1 A. I don't think so.

2 Q. Did Ohana have anything to do with that?

3 A. I don't think so.

4 Q. All right. Why don't we take a short break.

5 A. Okay.

6 (Recess taken.)

7 BY MR. WHATTOFF:

8 Q. Let's go back on the record. Mr. Moseley, in
9 fall of 2009, you decided to move back onto Marine Corps
10 Base Hawaii, correct?

11 A. Yes.

12 Q. Did that coincide with your return from
13 deployment, or did you -- was the new home rented before
14 you returned?

15 A. My wife got it -- probably the month before I
16 returned, she came back.

17 Q. Your wife moved back about a month before you,
18 and then you came back about a month after that?

19 A. Yeah, it was like the next month.

20 Q. Did your wife handle the signing of the lease
21 then for the Nahiha Loop home?

22 A. I think so. I might have had to go in and sign
23 again when I returned.

24 Q. Given the problems that you had with the Lawrence
25 Road home, why did you decide to return to Marine Corps

1 THE WITNESS: I mean, I know my family was
2 sick and stuff from living there, and had problems.

3 BY MR. WHATTOFF:

4 Q. But no one's ever told you that those problems
5 were caused by organochlorinated pesticides, correct?

6 A. They definitely said it was possible.

7 Q. Has anybody ever said that it was caused by
8 organochlorinated pesticides?

9 A. They've spoken about it, and other chemicals used
10 on base; like I said before, Dr. Gentile.

11 Q. Well, Dr. Gentile -- well, strike that. Is your
12 testimony that if you had been aware chlordane was used
13 to treat the homes at Marine Corps Base Hawaii prior to
14 living in the Lawrence Road home that you would have
15 rented an off-base home?

16 A. If I had known that it was gonna be so dangerous
17 to live there and be exposed to it I would have lived
18 off base.

19 Q. I'm asking you a different question. I'm just
20 asking you if you had been told that chlordane and
21 similar pesticides were used to address termites in some
22 of the neighborhoods, would you have rented off base
23 instead of renting the Lawrence Road home?

24 A. Yes.

25 Q. Do you know if the off-base homes that you were

1 MR. SMITH: Can we go off the record for a
2 second.

3 (Discussion had off the record.)

4 (Recess taken.)

5 BY MR. WHATTOFF:

6 Q. Mr. Moseley, did you take photos of the dust
7 impacts at any of the homes you lived in?

8 A. I know my mom took pictures in the first house,
9 but I can't find any of that stuff.

10 Q. You never took any photos, though, correct?

11 A. Not myself.

12 Q. Did you ever take any pictures of any of the dust
13 impacts with your cell phone?

14 A. I know I took pictures with my old cell phone,
15 but that was a very long time ago.

16 Q. Which house would that have been at?

17 A. We took pictures everywhere.

18 Q. Specifically what I am trying to get at, I know
19 you might have taken pictures that, you know, showed the
20 home in the background and things like that, and I'll
21 definitely show you some of those pictures during your
22 deposition today, but did you ever try to take any
23 pictures specifically showing the impacts of dust on
24 that house?

25 A. Yeah, the first house I know I took pictures

1 showing what I was dealing with, trying to get through
2 to my house, you know, the roads being blocked off all
3 the time, and the wonderful view we had.

4 Q. But you don't have any of those photos anymore?

5 A. No, that was an old, old phone.

6 Q. Did you take any -- and let me ask you this: Did
7 you take any photos of any dust issues at the Nahiha
8 Loop home?

9 A. Probably just like the construction and stuff
10 going on across the street. But like I said, the first
11 house was freaking terrible, and so I didn't want more
12 of that, pictures.

13 Q. Did you -- but I guess I was a little confused by
14 that answer. Did you take any photos of the impacts of
15 the dust on your Nahiha Loop home?

16 A. Yeah, I mean, we took pictures of, you know, the
17 dirt and stuff from construction and stuff, but I mean,
18 we weren't all worried about it like the first house.

19 Q. So you took pictures of, like, for instance, the
20 outside of the home to show what the dust looked like on
21 the outside of the house?

22 A. Yes.

23 Q. Where are those pictures?

24 A. Long gone.

25 Q. Those are on your own cell phone?

1 covered in a thick layer of dirt, like, a few hours
2 later.

3 Q. Let's talk about the Nahiha Loop home. What was
4 the impact of dust or dirt at the Nahiha Loop home?

5 A. The inside of the house was definitely a lot
6 better. It had actual modern windows and a modern AC.

7 Q. Well, let me just stop you there. Did you have
8 issues with construction dust on the interior of the
9 Nahiha Loop home?

10 A. I mean, I guess sometimes when the door would be
11 open some dust would come in, but it wasn't like the
12 first house which was constantly filled.

13 Q. Okay. So to the extent there was any impact it
14 was minimal on the interior of Nahiha Loop; is that fair
15 to say?

16 A. Yes.

17 Q. Now, what about the exterior of the Nahiha Loop
18 home?

19 A. Like I said, I had to hose off the porch and
20 furniture and stuff.

21 Q. How often would you have to do that?

22 A. I probably did it once a week maybe.

23 Q. Your children were able to play outside at the
24 Nahiha Loop home, though?

25 A. Yes.

1 Q. And did the dust ever stop them from playing
2 outside at the Nahiha Loop home?

3 A. No.

4 Q. And were you able to use the outside area, the
5 backyard, to the extent you wanted to at the Nahiha Loop
6 home?

7 A. Didn't really have a yard.

8 Q. There's usually a porch or maybe a little
9 barbecue area or something like that?

10 A. Yes, like a barbecue.

11 Q. The dust impacts, to the extent there was any, it
12 never prevented you from having a barbecue outside, for
13 instance?

14 A. Sometimes. It would have to be covered some days
15 because there would be, like, a pretty big dirt kickup.

16 Q. Okay. But that was not a common occurrence that
17 you'd have a dirt kickup as you described?

18 A. Yeah, it wasn't really constant.

19 Q. How often would that occur?

20 A. It was probably weekly, but it wasn't, like, a
21 daily thing.

22 Q. But was there ever a time where you couldn't go
23 outside and use the outside area because of some dust
24 issue?

25 A. Not at the house, but the playground across the

1 of the house, I think there was a drainage thing right
2 outside the back porch and around that was no grass and
3 it was all just loose brown dirt, and that would get,
4 you know, thrown up all over the back porch and then it
5 would come in the door when the door was open.

6 Q. Okay. Is that like people walking through and
7 walking into the house, or what are you describing
8 there?

9 A. Yeah, I mean, it would be people walking through,
10 them doing yard work especially because that was like a
11 common area right outside my back porch. We didn't have
12 a yard. The wind blowing.

13 Q. Would that have been inside, the interior of your
14 house?

15 A. If the door was open.

16 Q. Was that a problem, that dirt from that area
17 would come in through the open door?

18 A. I mean, the doors didn't seal all that great.
19 But, also, just walking would track in stuff, too. But
20 I would say the house mostly -- it wasn't like
21 construction dust, it was just the -- all the soil
22 outside of the house itself.

23 Q. Okay. Was there any impact from construction
24 dust on the outside of your Cochran Street home?

25 A. It was dusty, but it's probably minimal from, you

1 know, construction unless it was blown over there.

2 Q. Did the dust ever prevent you from doing anything
3 outside at the Cochran Street home?

4 A. No.

5 Q. Did the dust ever have any impact on you
6 physically at the Cochran Street home?

7 A. Physically?

8 Q. Yeah. Making it hard to breathe, making your
9 eyes water, something like that?

10 A. Just outside sometimes.

11 Q. Okay, how often would that occur?

12 A. It wasn't that often.

13 Q. What would occur?

14 A. My eyes would get dry. Sometimes it would get
15 hard to breathe. Also, I do remember in that time
16 period during PT, running around that area and I had
17 like an asthma attack, and I've never had a problem like
18 that before in my life.

19 Q. Where did this occur?

20 A. That was on -- we used to run past the
21 neighborhood, and I've forgot the name of the beach, but
22 the road that goes by the beach over by Fort Hase Beach
23 I believe.

24 Q. When you describe these physical impacts, like
25 your eyes being dry, is that at your Cochran Street

1 Q. So for the record, there's no physical health
2 issues that you contend have occurred to you because of
3 exposure to organochlorinated pesticides? To you.

4 A. Yes.

5 Q. Correct?

6 A. Correct.

7 Q. And there's no physical health issues that you
8 contend have occurred to you because of exposure to dust
9 on MCBH, correct?

10 A. Correct.

11 Q. And you've never been diagnosed with any physical
12 health issues because of OCPs, correct?

13 A. Correct.

14 Q. You do contend that you've suffered some
15 emotional distress as a result of living at MCBH?

16 A. Yes.

17 Q. Is that your concerns about your sons' health --
18 or your children's health, I should say?

19 A. What do you mean?

20 Q. Well, what do you contend is the nature of the
21 emotional distress that you suffered as a result of
22 living at MCBH?

23 A. Being taken advantage of. My kids' severe
24 problems they have, living with it daily. Getting them
25 to all their therapies daily. Every minute I'm awake is

1 their hands after direct soil contact and washing all
2 plants and vegetables grown on site before consuming.
3 Do you believe there's anything untrue about that
4 statement?

5 A. No.

6 Q. In the community handbook Ohana and Forest City
7 told lessees that chlordane and other pesticides might
8 be found around their homes, correct?

9 MR. SMITH: Objection, misstates the
10 evidence, calls for speculation. Also calls for
11 speculation.

12 If you know.

13 THE WITNESS: No, they didn't show that to
14 me.

15 BY MR. WHATTOFF:

16 Q. In this community handbook, they are telling
17 people who read the handbook that chlordane and other
18 pesticides might be around their homes, correct?

19 A. Yes.

20 Q. Did you have any pets while you were at MCBH?

21 A. Just one for a very short period.

22 Q. Did you have any service animals while you were
23 living at MCBH?

24 A. No.

25 Q. What's the pet that you had for a short period?

1 A. It was Vader and I was going to train him to be a
2 service animal, and we had to leave Hawaii when I got
3 retired, and we had to get rid of him because the --
4 they wouldn't let animals fly when they reach certain
5 temperatures.

6 Q. How long did you have Vader for?

7 A. Only a few months.

8 Q. Did your pet have any issues caused by dust or
9 organochlorinated pesticides?

10 A. Not that I know of.

11 Q. You currently live at [REDACTED] in
12 Fairhope, Alabama?

13 A. Yes.

14 Q. And when did you move in there?

15 A. 2013. I'm not sure on the exact date.

16 Q. Was that a new home or was that a home that had
17 been built previously?

18 A. It was built previously.

19 Q. When was that home constructed?

20 A. I think 2005.

21 Q. Is it part of a development of similar homes, or
22 is it --

23 A. Yes.

24 Q. Do you know what was in the area before that
25 development was built?

1 A. No. No, I don't.

2 Q. Do you know if that area was ever treated with
3 organochlorinated pesticides?

4 A. No, I don't.

5 Q. Do you know if that area was ever treated with
6 any pesticides?

7 A. Just like Terminix-type stuff.

8 Q. Was it -- do you know if it was agricultural land
9 before you moved there?

10 A. I'm not sure.

11 Q. Mr. Moseley, other than the fact that
12 organochlorinated pesticides were used at Marine Corps
13 Base Hawaii at some point in the past, do you have any
14 other evidence that the dust that impacted your home
15 contained organochlorinated pesticides?

16 A. I just -- I know it was around all the housing on
17 base.

18 Q. I'm sorry, what do you mean by that?

19 A. I know it was in the soil around all the housing
20 areas on base.

21 Q. Okay, and other than the fact that there had been
22 pesticides around some of the housing on base, is there
23 any other evidence or facts that you're relying on when
24 you contend that the dust that impacted your homes
25 contained organochlorinated pesticides?

C E R T I F I C A T E

STATE OF HAWAII)

) SS:

CITY AND COUNTY OF HONOLULU)

I, SHEILA MOORE, Certified Shorthand Reporter, do
Hereby certify:

That on April 16, 2019, at 8:00 a.m., appeared before
me, TIMOTHY MOSELEY, the witness whose deposition is
contained herein; that prior to being examined with
witness was by me duly sworn;

That the deposition was taken down by me in machine
shorthand and was thereafter reduced to typewriting;
that the foregoing represents, to the best of my
ability, a true and correct transcript of the
proceedings had in the foregoing matter.

That pursuant to Rule 30(e) of the Hawaii Rules of
Civil Procedure, a request for an opportunity to review
and make changes to this transcript:

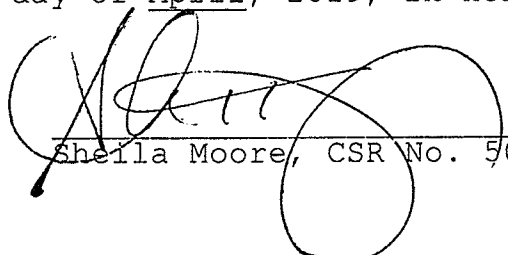
 x Was made by the deponent or a party (and/or their
attorney) prior to the completion of the
deposition.

 Was NOT made by the deponent or a party (and/or
their attorney) prior to the completion of the
deposition.

 Was waived.

I further certify that I am not an attorney for any
of the parties thereto, nor in any way concerned with
the cause.

Dated this 25th day of April, 2019, in Honolulu,
Hawaii.



Sheila Moore, CSR No. 501